

ORDINANCE NO. 120114B

**AN ORDINANCE OF THE TOWN OF FISHERS, HAMILTON COUNTY, INDIANA
CONCERNING PROPERTY MAINTENANCE**

WHEREAS, the Town of Fishers, Hamilton County, Indiana ("Fishers") desires to adopt a property maintenance ordinance to address properties that are falling into disrepair within Fishers' municipal boundaries;

WHEREAS, properties that are chronically in disrepair create safety issues and negatively impact neighborhoods; and

WHEREAS, Fishers desires employ a myriad of approaches to work with property owners to bring their properties into compliance with this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Fishers, Hamilton County, Indiana meeting in regular session as follows:

Section 1. TITLE.

This ordinance shall be known as "Fishers Exterior Building Property Maintenance Code" for all residential and non-residential structures and properties (also known as Class 1 and Class 2 Structures) and is herein referred to as the Property Maintenance Code. If there is any conflict between the Property Maintenance Code and the Rules of the Fire Prevention and Building Safety Commission, the Rules of the Fire Prevention and Building Safety Commission shall apply. If the Rules are silent as to what is required, the Property Maintenance Code shall control.

Section 2. PURPOSE.

The purpose of the Property Maintenance Code is to protect the public health, safety, and welfare in all existing structures by establishing minimum standards for basic equipment and facilities for light, ventilation, space heating, sanitation, protection from the elements, safety from fire, safe and sanitary maintenance; setting the responsibilities of owners, operators, and occupants of all structures; and providing administration, enforcement, and penalties.

Section 3. APPLICABILITY.

Any alterations to buildings, or changes of use therein, which may be caused directly or indirectly by the enforcement of this ordinance shall be done in accordance with applicable Rules of the Fire Prevention and Building Safety Commission. No owner, occupant, or tenant of a building shall be required to alter, remediate, repair, or rehabilitate a building to conform with the following provisions of this ordinance if at the time the building was constructed, or later altered as permitted and inspected by the Town, said building met all applicable Rules of the Fire Prevention and Building Safety Commission in effect at the time of construction or approved

alteration, and maintained to that standard, unless alteration, remediation, or repair is necessary to:

1. Maintain safety, soundness, and support actual designed loads of the building as required by the Rules of the Fire Prevention and Building Safety Commission; or
2. Maintain fire safety for exiting, smoke detectors, wiring, and HVAC as required by the Rules of the Fire Prevention and Building Safety Commission.

This ordinance establishes minimum requirements for the initial and continued occupancy or use of all buildings and structures and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities except as provided in this section. Nothing in this ordinance shall be deemed to abolish or impair existing remedies of the city or its officers or agencies relating to the removal or demolition of any buildings that are deemed dangerous, unsafe, or unsanitary.

Section 4. ZONING CONSIDERATIONS.

Nothing in this ordinance shall permit the conversion or establishment of any dwelling in any zone except where permitted by zoning. In addition, no nonconforming use or structure may be altered unless in conformance with applicable zoning provisions.

Except as provided in this section, in any case where a provision of this ordinance is found to be in conflict with a provision of any, building, fire, safety or health ordinance or code of Fishers existing on the effective date of this ordinance which establishes a lower standard for the promotion and protection of the safety and health of the people, the provisions of this ordinance shall prevail, and such other ordinances or codes are hereby declared to be replaced to the extent that they may be found to be in conflict with this ordinance.

Section 5. VALIDITY.

A. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall continue in full force and effect.

B. Saving Clause. This ordinance shall not affect the violations of any other ordinance, code or regulation of the city existing prior to the effective date hereof, and any such violation shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.

Section 6. INTERPRETATION.

For the purpose of this ordinance, the following words and phrases shall be interpreted as follows:

- A. The word "person" includes an individual, firm, association, organization, partnership, trust, company, corporation, or any other legal entity.
- B. The masculine includes the feminine.
- C. The present tense includes the past and future tense; the singular number includes the plural.
- D. The word "shall" is a mandatory requirement; the word "may" is a permissive requirement; and the word "should" is a preferred requirement.
- E. The words "used" or occupied include the words "intended, arranged, or designed to be used or occupied."
- F. The words "residential" and "non-residential" refer to the terms Class 1 and Class 2 Structures used in the Rules of the Fire Prevention and Building Safety Commission.
- G. Whenever the words "multi-family dwelling," "residence building," "dwelling unit," or "premises" are used in this ordinance, they shall be construed as though they were followed by the words "or any part thereof."

Section 7. DEFINITIONS.

The following words or phrases are defined as follows:

- A. Abandoned structure: deserted or vacant structure where any of the following conditions exist:
 - 1) is open to casual entry or trespass;
 - 2) is damaged by fire, flood, weather, or vandalism to an extent which prohibits safe human occupancy;
 - 3) is the site of loitering or vagrancy; or
 - 4) has utilities disconnected or not in use.
- B. Accessory Structure or Building: Structure or building that is located on the same parcel of property as the principal structure and the use of which is incidental and subordinate to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal impact on adjoining properties. Examples of accessory structures are detached garages, carports, storage, sheds, pole barns, hay sheds, and lean-tos.

- C. Accessory Use: A secondary use on a property that is incidental and subordinate to a primary use located on the same property and does not alter or change the character of the premises.
- D. Approved: Approved by the Building Commissioner under the provisions of this ordinance, or approved by another authority designated by law to give approval in the matter in question.
- E. Building: Any structure designed, built, and used for the shelter, protection, or enclosure of persons or property that is permanently affixed to land. This term shall include manufactured and modular homes but shall not include recreational vehicles. A building is also a structure.
- F. Building Code: The Rules adopted by the Fire Prevention and Building Safety Commission at 675 IAC 13, as amended, for the regulation of construction, alteration, and addition of Class 1 Buildings and Structures.
- G. Building Commissioner: The official designated by the Mayor to enforce building, zoning, or similar laws and this ordinance, or his duly appointed representative.
- H. Deterioration: To weaken, disintegrate, corrode, rust or decay and lose effectiveness.
- I. Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for sleeping, eating, cooking and sanitary purposes. This term shall encompass manufactured and modular homes but shall not include recreational vehicles.
- J. Exterior Property Areas: The open space on the premises and on adjoining property under the control of owners or operators of such premises.
- K. Extermination: The control and elimination of insects, rodents or other vermin by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poison spraying, fumigating, trapping or by any other approved vermin elimination methods.
- L. Garbage: Rejected food wastes including every waste, accumulation of animal, fruit or vegetable matter used or intended for food or used in the preparation, use, cooking, sale, or storage of meat, fish, fowl, vegetable, or fruits.
- M. Infestation: The presence, within or contiguous to, a structure or premises of insects, rats, vermin, or other pests.
- N. Let for Occupancy or Let: To permit, provide, or offer possession or occupancy of a dwelling, dwelling units, building, premises, or structure by a person who is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

- O. Occupancy: The purpose for which a building or portion thereof is utilized or occupied.
- P. Occupant: Any individual living or sleeping in a building or having possession of a space within a building.
- Q. Open Cracks: A hole which permits entry of insects, rodents, vermin, and other pests.
- R. Operator: Any person who has charge, care or control of a structure or premises which are let or offered for occupancy or use.
- S. Owner: Any person, firm, association, syndicate, partnership, corporation or any other legal entity having a legal title to or sufficient proprietary interest in the land under these regulations.
- T. Person: An individual, firm, association, company, corporation, organization, partnership, trust, legal representative, trustee, receiver, or any other group acting as a unit.
- U. Plumbing Fixtures: A receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water therefrom; or discharges waste water, liquid borne waste materials, or sewage directly or indirectly to the drainage system of the premises; or that requires both a water supply connection and a discharge to the drainage system on the premises.
- V. Premises: A lot, plot or parcel of land, easement or public way, including any structures therein.
- W. Public Way: Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.
- X. Residential Code: The Rules adopted by the Fire Prevention and Building Safety Commission at 675 IAC 14, as amended, for the regulation of construction, alteration, and addition of Class 2 Buildings and Structures.
- Y. Rubbish: Useless waste or rejected matter like ashes, cans, metal-ware, broken glass, crockery, foul and filthy substances, dirt, sweepings, boxes, wood, grass, weeds, and waste materials of any kind.
- Z. Structure: An assembly of materials forming a construction for occupancy or use, including among others, buildings, garages, tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, open sheds, coal bins, shelters, fences and display signs.
- aa. Supplied: Installed, furnished or provided by the owner or operator.

- bb. Tenant: A person, corporation, partnership or group, whether or not the legal owner on record, occupying a building or portion thereof as a unit.
- cc. Toilet Room: A room containing water closet, urinal, and/or lavatory but not a bathtub or shower.
- dd. Ventilation: The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.
- ee. Ventilation, Mechanical: The process of supplying and removing air by power-driven devices.
- ff. Ventilation, Natural: The process of supplying and removing air by opening to outer air through windows, sky lights, door, louvers or stacks without power driven devices.

Section 8. ENVIRONMENTAL REQUIREMENTS.

The provisions of this ordinance shall govern the minimum conditions of property and buildings. Every building or structure, except as exempted by other parts of this ordinance and the premises on which it stands shall comply with the conditions herein prescribed. No person shall occupy as owner-occupant or let to another for occupancy any structure or premises that does not comply with the following requirements. The Building Commissioner may conduct periodic inspections to be made of all premises to secure compliance with these requirements. It shall be the responsibility of the Building Commissioner to determine whether correction is needed. The Building Commissioner shall also look at the extent of the corrections needed and set a time period for correction unless a time is specifically stated in this ordinance.

Section 9. MAINTENANCE OF EXTERIOR PROPERTY AREAS.

- A. Sanitation. All exterior property areas shall be maintained in a clean and sanitary condition.
- B. Grading and Drainage. All premises shall be graded and maintained to prevent accumulation of stagnant water thereon, or within any building or structure located thereon.
- C. Noxious Weeds. All exterior property areas shall be kept free from species of weeds or plant growth which are noxious or detrimental to the public health.
- D. Accessory Structures. All accessory structures, including detached garages, shall be maintained, structurally sound, and in good repair.
- E. Foundation Walls. The foundation elements shall adequately support the building at all points. All foundation walls shall be maintained and free from open cracks, breaks, tears and holes and shall be kept in such condition as to prevent the entry of rodents and other pests.

F. Exterior Walls. Every exterior wall shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions that admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building. All exterior walls shall have some type of water resistant exterior finish such as siding or masonry. Exterior weather wrap and treated plywood shall not be sufficient. All exterior walls shall be kept in such condition as to exclude rodent or insect infestation. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

G. Roofs and Overhanging Extensions. The roof and flashing shall be kept maintained in a sound and tight manner as not to admit rain or water. Roof drainage shall be adequate to prevent dampness or deterioration within the walls or interior portions of the structure. All overhanging extensions including but not limited to canopies, marquees, signs, metal awnings, and porch roofs shall be maintained and kept in sound condition. Temporary tarps placed upon a roof shall be limited to sixty (60) days.

H. Stairs, Porches, and Railings. All exterior stairways, decks, porches and balconies and all appurtenances attached thereto, shall be maintained in a structurally sound condition and be kept in good repair, with proper anchorage and capable of supporting any imposed loads.

I. Structural Safety. Every outside stair, porch, and appurtenance to every structure shall be so constructed as to be safe to use and capable of supporting the loads to which it is subjected and shall be kept in sound condition and good repair.

J. Handrails and Guardrails. Where required by the Building or Residential Code, every flight of stairs that is four or more risers high shall have handrails located as required by the applicable code. Every porch that is four or more risers high shall have handrails located and of such design as required by the Building or Residential Code. Every handrail and guardrail shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

K. Windows, Doors, and Hatchways. All glazing and windows shall be maintained free from cracks and holes. All windows, other than fixed windows, shall be easily opened from the inside of the structure.

- L. Windows to be glazed. Every window sash shall be fully supplied with glass window panes or an approved substitute which are without open cracks or holes.
- M. Windows to be tight. Every window sash shall be in good condition and fit reasonably tight within its window frame.
- N. Windows to open. Every window other than a fixed window, shall be capable of being easily opened and shall be held in position by window hardware.
- O. Door hardware. Every exterior door, door hinge, and door latch shall be maintained in good condition.
- P. Doors to fit frame. Every exterior door, when closed, shall fit reasonably well within its frame.
- Q. Window and door frames to fit well. Every window, door, and frame shall be maintained in such relation to the adjacent wall construction so as to exclude precipitation as completely as possible, and to substantially exclude wind and drafts from entering the dwelling or structure.
- R. Basement hatchways. Every basement hatchway shall be so constructed and maintained to prevent the entrance of rodents, insect infestation, rain and surface drainage water into the dwelling or structure.
- S. Exit doors. Every door available as an exit shall be capable of being easily opened from the inside.
- T. Vacant properties. All vacant properties shall have windows and doors secured from unauthorized entry. If windows, doors, and other openings are not capable of being locked, the owner shall be responsible for boarding or otherwise securing the opening.
- U. Gutters. Every gutter shall be maintained and kept in a functional, sound, and safe state of maintenance and repair to effectively carry off water without blockage or leakage.
- V. Structural Members. All structural members of the exterior shall be maintained in a structurally sound manner and be capable of supporting all imposed loads. Any deficiencies in structural members identified by the Building Commissioner shall be evaluated by an Engineer licensed in the State of Indiana as directed by the Building Commissioner at the expense of the property owner.

Section 10. RESPONSIBILITIES OF OCCUPANTS.

- A. Cleanliness. Every occupant of a building or part thereof shall keep that part of the building or premises thereof which he occupies, controls or uses in a clean and sanitary condition.

B. Disposal of Rubbish. Every occupant of a building or part thereof shall dispose of rubbish in a clean and sanitary manner by placing it in the rubbish containers required by city ordinances.

C. Disposal of Garbage. Every occupant of a building or part thereof shall dispose of garbage in a clean and sanitary manner by placing it in garbage disposal facilities, or if such facilities are not available, by removing all non-burnable matter and securely wrapping such garbage and placing it in tight metal storage containers, or by such other disposal method as may be required by applicable laws or Fishers ordinances.

Section 11. ENFORCEMENT & CORRECTION.

It shall be the responsibility of Fishers Building Commissioner to enforce the provisions of this ordinance to determine, in the Commissioner's sound discretion, gross violations, with or without internal inspections and to issue a notice of gross violation when in such judgment the Commissioner determines and reasonably believes a gross violation exists.

For purposes of this ordinance, the term "gross violation" shall mean (a) a person's failure to satisfy multiple responsibilities addressed in this ordinance; (b) a person's violation of multiple subsections of Section 9 of this ordinance; c) a person's failure to respond to notice that a building or premises does not comply with this ordinance; or (d) a person's ongoing or continuing gross violations, regardless of whether such gross violations are consecutive.

Section 12. COORDINATION OF ENFORCEMENT.

Inspection of premises and the issuing of orders in connection therewith under the provisions of this ordinance shall be the exclusive responsibility of the Fishers Building Commissioner. Wherever, in the opinion of the Building Commissioner it is necessary and desirable to inspect any condition by any other department, the Commissioner shall coordinate inspections so the occupant and/or owner is not unreasonably subjected to visits by numerous inspectors nor to multiple or conflicting orders. No order for correction of any gross violation under this ordinance shall be issued without the approval of the Building Commissioner.

Section 13. INSPECTIONS.

The Building Commissioner shall make or cause to be made inspections to determine the conditions of all structures and premises to safeguard the public health, safety, and welfare under the provisions of this ordinance. If the Building Commissioner develops probable cause that the Property Maintenance Code has been violated, the Building Commissioner may obtain an administrative search warrant or other authorization from a court of law to enter the premises and conduct the necessary and authorized search. Such search warrant shall be requested from a court upon the submission of any photographs obtained from public property or neighboring property, an affidavit supporting a reason to believe a gross violation exists of this Property Maintenance

Code or Building or Residential Code, and/or any other supporting evidence justifying the issuance of the search warrant in compliance with Fourth Amendment requirements. If an owner, tenant, or other person in control of the property voluntarily allows entry in to the property, no such warrant shall be necessary. The inspection shall be limited to areas and purposes authorized by the person in control of the premises or the administrative search warrant. This ordinance shall not be construed to require or authorize inspections where there is no cause to believe a gross violation exists. Abandoned structures and lots shall be subject to unrestricted, complete and thorough code inspections, including legal right of entry into those structures found unsecured.

Section 14. VIOLATIONS.

A. Service of Notice-Initial Violation. Whenever the Building Commissioner determines that there has been or is a gross violation, or that there are reasonable grounds to believe that there has been a gross violation of any provision of this ordinance, the Commissioner shall give notice of such gross violation or alleged gross violation. Notice of gross violation shall be served upon the owner of record by certified mail, return receipt requested, or personal service upon the landowner and/or tenant if a resident of Fishers, or by posting a copy thereof in a conspicuous place in or about the structure affected by the notice. Such notice shall:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Specify the gross violation which exists and the remedial action request.
4. Allow a reasonable time for the performance of any act it requires.

B. Service of Notice-Continuing Violation. If an initial notice of gross violation was provided by certified mail or first class mail, a notice of continuing violation may be posted at the premises or structure. A notice of continuing violation serves as notice that each subsequent gross violation during the same year for which an initial notice of the gross violation was issued subjects a person to prosecution of the gross violation as set forth in Section 16.

Section 15. REMEDIATION.

After an order is issued, the person or occupant subject to the order may work with the Building Commissioner to complete a remediation plan. If such a remediation plan is developed and the person or occupant complies with such plan, the order shall become null and void.

For purposes of this Section, "remediation plan" shall mean a plan to bring the building and/or premises into compliance with this ordinance, the Building Code and the Residential Code that is accepted in writing by Fishers and a person subject to a penalty for gross violation of this ordinance.

Section 16. PROSECUTION OF GROSS VIOLATION-PENALTY.

If the order concerns a gross violation as defined in Section 11 above and a remediation plan (a) is not entered into; or (b) a person does not comply with a remediation plan, the Building Commissioner may request the City Attorney to institute an ordinance violation action against the person responsible for the gross violation in the City Court.

Any person, firm, or corporation, who shall commit a gross violation of any provision of this ordinance shall, upon conviction, pay the following applicable fine to Fishers:

- | | | |
|----|--|---|
| A. | First Offense: | Up to Fifty Dollars (\$50.00); |
| B. | Multiple Gross violations cited on First Offense: | Up to One Hundred Dollars (\$100.00) |
| C. | Second Offense within one (1) year: | Up to One Hundred Dollars (\$100.00); and |
| D. | Third Offense and each additional offense within one (1) year: | Up to Two Hundred Fifty Dollars (\$250.00). |

Unpaid gross violations shall additionally be referred to the Fishers' City Court. Every day that a gross violation continues after due notice has been served, in accordance with the terms and provisions hereof, shall be deemed a separate offense.

Section 17. RIGHT OF APPEAL.

A. Time for Appeal. Any owner or person who is aggrieved with the ruling or decision of the Building Commissioner in any matter relative to the interpretation or enforcement of the provisions of this ordinance may appeal the decision or interpretation. This appeal must be filed with Fishers' Department of Community Development in writing, within ten days of the receipt of an order.

B. Time for Hearing. Upon receipt of such appeal the Director shall fix a reasonable time, not to exceed thirty (30) days, for the hearing of the appeal before the Board of Public Works and Safety and give due notice thereof to the parties subject to the order.

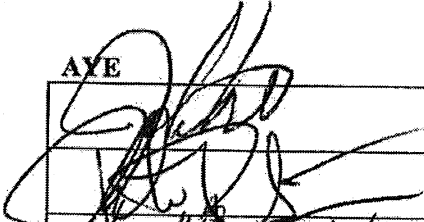


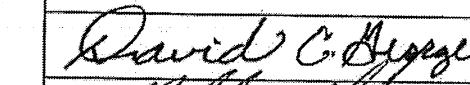
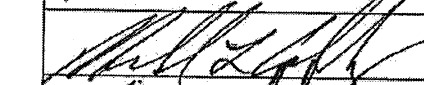
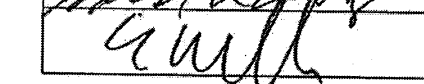
D. Determination. The Board of Public Works and Safety may confirm or modify the order, requirement, decision or determination.

E. The owner or person may appeal the Board's determination in the Fishers City Court by filing an appeal within twenty (20) days of the Board's decision.

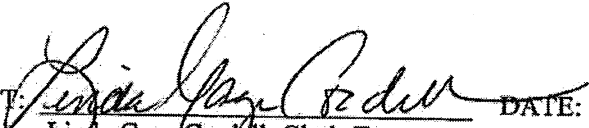
F. The decision of Fishers' City Court may be appealed to a Hamilton County Circuit or Superior Court.

ALL OF WHICH IS ORDAINED THIS _____ day of December, 2014.

**TOWN COUNCIL OF THE TOWN OF FISHERS,
HAMILTON COUNTY, INDIANA**

AYE		NAY
	John W. Weingardt, President	
	C. Pete Peterson, Vice President	
	Scott A. Faultless, Member	
	Stuart F. Easley, Member	
	David C. George, Member	
	Michael L. Colby, Member	
	Eric C. Moeller, Member	

ATTEST:


Linda Gaye Cordell, Clerk-Treasurer
Town of Fisher

DATE: _____

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